

EXEMPTIONS

Explanations of how the statute may be interpreted and applied in practice are shown in a sans-serif typeface in the boxes accompanying the statute text.

36 § 4641-C. Exemptions

The following are exempt from the tax imposed by this chapter: 1993, c. 398, § 4 (amd).

Exemptions to the Transfer Tax Statute are, for the most part, quite specific. All parties offering a deed for recordation shall, when claiming that a transaction is exempt, state that exemption in the terms set forth below. There are no exemptions other than the ones explained in this statute. The following notes are an attempt to interpret those situations that are not clearly addressed by the statutes, and to generally demonstrate those common transactions that are and are not exempt.

- 1. Governmental entities.** Deeds to property transferred to or by the United States, the State of Maine or any of their instrumentalities, agencies or subdivisions. For the purposes of this subsection, only the United States, the State of Maine and their instrumentalities, agencies and subdivisions are exempt from the tax imposed by section 4641-A; except that real property transferred to the Department of Transportation or the Maine Turnpike Authority for transportation purposes; gifts of real property to governmental entities; and deeds transferring real property to governmental entities from a bona fide nonprofit land conservation organization are exempt from the tax; PL 1997, c. 504, § 10 (amd).

In the case of transfers to and from the following, only the government portion of the tax is exempt from transfer tax. A non-government party must pay its half of the transfer tax based on the value of the property transferred:

U. S. Government.
The State of Maine.
Instrumentalities of the State of Maine.
Agencies of the State of Maine.
Subdivisions of the State of Maine. (counties, municipalities, plantations, etc.)
Entities made exempt by acts of the legislature.

In the case of the following, the transfer is wholly exempt from transfer tax:

The Department of Transportation. (for transportation purposes only)
Maine Turnpike Authority. (for transportation purposes only)
Gifts of real property to governmental entities.
Any deeds from a bona fide nonprofit land conservation organization to a governmental entity.

- 2. Mortgage deeds.** Mortgage deeds, discharges of mortgage deeds and partial releases of mortgage deeds, deeds from a mortgagor to a mortgagee in lieu of foreclosure and deeds from a mortgagee to itself at a public sale held pursuant to Title 14, section 6323. In the event of a deed to a 3rd party at such a public sale, the tax imposed upon the grantor by section 4641-A applies only to that portion of the proceeds of sale that

exceeds the sums required to satisfy in full the claims of the mortgagee and all junior claimants originally made parties in interest in the proceedings or having subsequently intervened in the proceedings as established by the judgment of foreclosure and sale. The tax must be deducted from the excess proceeds; 1993, c. 680, Pt. A, § 31 (rpr).

Mortgage deeds, discharges and releases are all exempt.

Deeds of foreclosure and in lieu of foreclosure from the mortgagor to the mortgagee are also exempt.

Deeds from the mortgagee to itself at a public sale held pursuant to Title 14 MRSA, section 6323 are exempt.

Deeds from a mortgagee to a third party at a public sale held pursuant to Title 14 MRSA, section 6323 are partially exempt to the mortgagee only. The mortgagee may deduct from the proceeds of the sale all claims of the mortgagee or any junior claimants in the sale. If the number is less than zero, then no tax is owed. The purchaser at this sale must pay a tax on the ½ the actual amount paid for the property at the sale.

Example: Mortgagee sells property to Purchaser (not the original mortgagor) for \$40,000.00.

In their foreclosure of the property, mortgagee/seller incurred costs of \$1,543.00 and held a mortgage that also had a value of \$17,125.00 at the time of foreclosure. The costs of the sale were \$800.00. For the purpose of transfer tax, mortgagee may deduct from the price paid all costs which amount in this case to \$19,468, incurring a ½ transfer tax based on a value of \$20,532 which tax amounts to \$46.20. Purchaser incurs a ½ transfer tax based on the sales price of \$40,000, amounting to \$88.00.

Even though it is not clear in the wording of the statute, the register should receive a declaration of value in all deeds from a mortgagee (who has title to the property) to a third party. See Section 4641 D that exempts only part of this exemption paragraph from the declaration requirement.

When a bank purchases a property at a required bank auction, it becomes an owner as other owners and its future transactions are taxable. Often this requires a further sale of the property to FNMA, FHMLC, or other secondary market party which transactions are usually fully taxable.

3. Deeds affecting a previous deed. Deeds that, without additional consideration and without changing ownership or ownership interest, confirm, correct, modify or supplement a deed previously recorded; 1993, c. 398, § 4 (amd).

"Corrective deeds" usually reflect an error made in a previous deed of the same property between the same parties. These are commonly called "corrective deeds" since their only purpose is to correct or clarify a title already in existence. To qualify for this exemption:

- a. There must be a deed between the parties.
- b. There is no consideration for the change in information.
- c. The interests of the parties do not change.
- d. There is no substantial change in the property description.

This exemption also includes a category of deeds known as "release deeds" where, in order to clarify title, a party must obtain a release of any unknown interest of others in the property. Such deeds are used to clear the chain of title, often just prior to an actual sale of the property. Lot line agreements or exchanges to correct an illegal situation (unbuildable lot, etc) are exempt.

Note: These deeds do not require a Declaration of Value. (See 4641-D) However, the register may ask for a detailed explanation and verification of such transactions on presentation for recording.

4. Deeds between certain family members. Deeds between husband and wife, or parent and child, without actual consideration for the deed, and deeds between spouses in divorce proceedings; PL 1997, c. 504, § 12 (amd).

This exemption is specific and limited. Deeds without real consideration between the following specific relationships is exempt. If there is any consideration for these then the transaction is taxable.

Parent to Child. (and spouse if married)
Child to Parent. (and spouse if married)
Spouse to Spouse.

1. A gift to a child and his or her spouse as joint tenants is not taxable. The reasoning is that by a second transfer to the child's spouse, both transactions are exempt under the law. If the transfer was as tenants in common, the undivided interest of the spouse is taxable. This is because a separate interest is being transferred to someone unrelated.

2. A gift to a child's spouse alone is taxable. The reasoning is that if the gift were meant to the child the donor would have done so and the spouse alone is not mentioned as exempt in the statute.

3. A gift to grandchildren and other relationships is taxable. Although a second transaction through the parents might make the entire transaction exempt, the legislature, in its wisdom, has chosen not to include grandchildren or others in the statute.

The following common transfers that are not exempt from transfer tax are as follows.

Transfer from one unmarried partner to another.
Transfers from brother to sister.
Transfers to grandchildren.
Transfers between ex-spouses that are not required by the divorce court or included in the divorce decree.

Transfers between spouses in divorce proceedings are exempt. This is interpreted to be those transfers that are ordered by the court and are made part of the divorce decree or are separate agreements incorporated into the decree. These transactions are exempt regardless of whether there is consideration or not, or whether the transfer must take place at a time in the future called for by the court.

Private agreements between ex-spouses that have not been required by the divorce court are taxable transactions. The language of the divorce decree will determine taxability of these transfers. Note here that spousal transfers are exempt until the date the divorce decree is effective.

5. Tax deeds.

Tax Deeds.

Black's Law Dictionary defines a tax deed as "a conveyance given upon a sale of lands made for non-payment of taxes: the deed whereby an officer of the law undertakes to convey the title of the proprietor to a purchaser at a tax sale."

We interpret this to be the sale of an officer of the court or a municipal officer to a party at a public tax sale, transferring the title of the delinquent former owner, whether to that proprietor or to a third party. A deed from a municipal official to a third party without the benefit of tax sale and for other consideration than the delinquent taxes is not a tax sale and is taxable as any other government transfer.

6. Deeds of partition. Deeds of partition when the interest conveyed is without consideration. However, if any of the parties take shares greater in value than their undivided interest, a tax is due on the difference between their proportional undivided interest and the greater value, computed at the rate set forth in section 4641-A; 1993, c. 398, § 4 (amd).

All owners of property in joint ownership have a "right of partition", which right allows each party the opportunity to establish a finite share of the property. Often such deeds occur when one joint party wishes to terminate an interest in the property. Such deeds may also occur when parties wish to change ownership from joint tenancy to common ownership. (Attorneys tend to call this "breaking a joint tenancy.") A problem in such transfers arises when the parties take unequal shares. This triggers a tax on the difference created in their interests.

Example: Jones, Smith and Brown own Longacre in joint tenancy. Brown finds himself in financial difficulties and must sell his interest. In order to clarify ownership, the three execute a deed of partition in which each is allocated a 1/3 interest in common. Now Brown can sell his interest to an outside party. No value is transferred in the deed of partition. The deed to the third party will involve a 1/3 interest in the property.

Example: When agreement cannot be determined on the division of joint property, judicial action may be needed to determine the interests of the parties. In this case there is no value unless the physical division does not equal the undivided interest. Such transfers are taxable to the extent of the unequal value of the party's interests.

Example: Jones and Smith and Brown are unrelated business partners. Jones holds $\frac{1}{4}$ interest in the partnership, Smith owns $\frac{1}{2}$ and Brown owns $\frac{1}{4}$. They have a dispute concerning the partnership, and Brown is awarded, because of his participation, $\frac{1}{2}$ of the value of the partnership. Brown's share is taxable to the extent of the difference in his undivided interest ($\frac{1}{4}$) and what he received from the court settlement ($\frac{1}{2}$). (This is an exception to our decision to exempt property required to be transferred by court decisions).

7. Deeds pursuant to mergers. Deeds made pursuant to mergers of corporations from which no gain or loss is recognized under the Internal Revenue Code; 1993, c. 398, § 4 (amd).

These transactions are relatively rare. When they happen, there will generally be a group of deeds submitted together with the same grantor and grantee. Corporations will normally request that these deeds be recorded and entered as a block or in particular sequence in the registry records. Attached to these deeds should be a paper stating the nature of the merger of the two corporations. There will often be no deeds passed in mergers of corporations.

8. Deeds by subsidiary corporation. Deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock; 1981, c. 148, § 1 (amd).

The only problem here will be in establishing that the grantor is an actual subsidiary of the grantee. Common stockholders or stock interests do not necessarily create a subsidiary. We have found that this exemption is sometimes claimed when the companies are not related except by common stock ownership or directors and are therefore not principal and subsidiary. Because these transfers are often substantial in overall value, investigation is warranted. (Also see *Exemption #10*)

9. Deeds prior to October 1, 1975. Deeds dated or acknowledged prior to October 1, 1975, and offered for recording subsequent to that date; 1993, c. 398, § 4 (amd).

There are very few of these deeds still in existent. In order to understand this exemption you must look at the history of the Maine transfer tax. The transfer tax system became so difficult to administer that the legislature felt it proper to forgive any remaining unrecorded transfers from the period from 1967 when the federal tax ceased.

10. Deeds by parent corporation. Deeds made by a parent corporation to its subsidiary corporation for no consideration other than shares of stock of the subsidiary corporation; 1993, c. 398, § 4 (amd).

11. Deeds of distribution. Deeds of distribution made pursuant to Title 18-A; 1993, c. 398, § 4 (amd).

In general, these deeds are deeds of the personal representative of a deceased's estate in accordance with a will, or, if there is no will, per the orders of the probate court through an appointed representative. This exemption does not include deeds between parties after probate has been completed. It also does not include deeds of a personal representative to third persons, nor deeds from a beneficiary to the Personal Representative, that are made either to preserve the estate or are not specified in a will but which assist that personal representative in making liquidity adjustments in bequests. Deeds due to private agreements are still taxable according to the statutes.

The most common error in claiming this exemption occurs when two or more persons receive a devise of property jointly and later transfer interests to one of them. This is a taxable transaction to the extent of the interest held by each transferor.

One problem may exist when a person renounces an interest in real property and that property reverts to the estate to be distributed by other probate rules. In this case the personal representative should verify that this was the case in the transaction.

This exemption does not include distributions from trusts unless that distribution is required by a will, or the trust is developed as a will substitute and the trusts dissolves upon the death of the trustor. (grantor of the trust).

12. Deeds executed by public officials. Deeds executed by public officials in the performance of their official duties; 1993, c. 398, § 4 (new).

This exemption is often confused with "Government Deeds" exemption. This, however does not refer to Municipal officials, but to a narrower classification within government. Often, transactions are required to be executed by an official in his/her own name and not in the name of the government unit. It is these transactions that are the subject of this exemption. (i.e. the transfer of a parcel of land by a state official for the purpose of establishing a State Park). This is parallel to and not in conflict with Government Deeds. It also may include most other court-ordered transfers.

13. Deeds of foreclosure and in lieu of foreclosure. A deed conveying real property back to a lender holding a bona fide mortgage that is genuinely in default, either by a sheriff conducting a foreclosure sale or by the mortgagor in lieu of foreclosure; 1993, c. 398, § 4 (new).

This is very specific and includes only deeds to a mortgagee and only when the mortgagor is in default. Such deeds may be voluntary on the part of the owner or may be involuntary due to the foreclosure procedures of a financing institution. There is usually a need to investigate the circumstances when there is a voluntary deed in lieu of foreclosure to determine that there is a bona fide default.

14. Deeds given pursuant to the United States Bankruptcy Code. Deeds given pursuant to The United States Bankruptcy Code; 1993, c. 398, § 4 (new).

These are often deeds from the owner to another person and look like any other deeds for consideration, except they are executed by the trustee in bankruptcy and so state on the declaration. Included in this exemption are also transfers back to the owner in bankruptcy ordered by a court voiding such a previous transfer. In practical terms, if it can be shown that a transfer is by order of a court, no tax is collected. (See exemption 12)

15. Deeds to a trustee, nominee or straw. Any deeds:

A. To a trustee, nominee or straw party for the grantor as beneficial owner; 1993, c. 398, § 4 (new).

B. For the beneficial ownership of a person other than the grantor when, if that person were the grantee, no tax would be imposed upon the conveyance pursuant to this chapter; or 1993, c. 398, § 4 (new).

C. From a trustee, nominee or straw party to the beneficial owner; 1993, c. 647, § 2 (amd); c. 718, Pt. B, § 10 (amd).

This is a most misunderstood exemption, especially now with the expansion of federal tax exemption in the area of trusts and the explosion of varieties of trusts available to persons wishing to shelter assets and income. It is apparent that this exemption, passed in 1993 was never intended to exempt all trusts from taxation. It is quite limited in its scope as explained below.

A. No tax is assessed to transfers of property into a trust in the case of a trust for the benefit of the grantor or;

B. When a distribution is made from a trust to another beneficiary, such transaction will be exempt if that beneficiary is a person or organization that would otherwise be exempt under the transfer tax statute. If a parcel of real estate is distributed to both an exempt beneficiary and a nonexempt beneficiary as joint or common owners, the interest of the nonexempt distributee is taxable.

C. Since “beneficial owner” is clearly defined in subparagraph A. and B., only distributions to such individuals are exempt from transfer tax.

Deeds of trustees within the trust agreements not to beneficiaries but in order to carry out other fiduciary duties in the preservation of assets are taxable as always.

Deeds to a nominee or straw are not taxable when the straw has specific duties beyond the mere transfer back to the owner. Such might be to alter the wording of the deed so that it complied with some regulation or to break a joint ownership to ownership in common (partition is a better exemption to claim in this case). The nominee or straw must perform some function for the grantor and then re-transfer the property back. The use of a straw for the sole purpose of hiding the real ownership of the property does not create an exempt transaction.

16. Certain corporate, partnership and limited liability company deeds. Deeds between a family corporation, partnership, limited partnership or limited liability company and its stockholders, partners or members for the purpose of transferring real property in the organization, dissolution or liquidation of the corporation, partnership, limited partnership or limited liability company under the laws of this State, if the deeds are given for no actual consideration other than shares, interests or debt securities of the corporation, partnership, limited partnership or limited liability company. For purposes of this subsection a family corporation, partnership, limited partnership or limited liability company is a corporation, partnership, limited partnership or limited liability company in which the majority of the voting stock of the corporation, or of the interests in the partnership, limited partnership or limited liability company is held by and the majority of the stockholders, partners or members are persons related to each other, including by adoption, as descendants or as spouses of descendants of a common ancestor who was also a transferor of the real property involved, or persons acting in a fiduciary capacity for persons so related; 1995, c. 462, Pt. A, § 69 (rpr).

This exemption has very specific elements which all must be in place for the exemption to be granted.

- a. Deeds between a family corporation, partnership or LLC and its stockholders, partners or members;

Family Corporation, partnership or LLC = any direct relationship appears to be sufficient in this case provided that the persons have a common ancestor who was also a transferor of the real property involved.

- b. Transferring property in the organization, dissolution or liquidation of the corporation, partnership or LLC.

Organization = the creation of the corporation, partnership or LLC.

Dissolution or Liquidation = the closing of the corporation, partnership or LLC

- c. No actual consideration other than shares, interests or debt securities of that organization.

17. Deeds to charitable conservation organizations. Deeds for gifts of land or interests in land granted to bona fide nonprofit institutions, organizations or charitable trusts under state law or charter, a similar law or charter of any other state or the Federal Government that meet the conservation purposes requirements of Title 33, section 476, subsection 2, paragraph B without actual consideration for the deeds; 1995, c. 462, Pt. A, § 70 (rpr). (See Appendix 4)

This exemption is more complex than it seems. Organizations that can accept gifts of land or interests in land with exemption from transfer tax are those that meet specific land conservation requirements as set out in the statutes (Title 33 §476, subsection 2, paragraph B).

- a. Retaining or protecting the natural, scenic or open space values of real property.
- b. Assuring the availability of real property for agricultural, forest, recreational or open space uses.
- c. Protecting natural resources.
- d. Maintaining or enhancing air and/or water quality.
- e. These institutions must be charitable according to the common law definition.
- f. The deeds must be for no consideration.

These deeds must be to bona-fide nonprofit institutions under Maine law. The declaration should state the exemption and provide the registry of deeds with proof of the non-profit status and nature and purposes of the institution.

18. Limited liability company deeds. Deeds to a limited liability company from a corporation, a general or limited partnership or another limited liability company, when the grantor or grantee owns an interest in the limited liability company in the same proportion as the grantor's or grantee's interest in or ownership of the real estate being conveyed;

This exemption is for a relatively rare situation in which there is really nothing of value transferred. The ownership in the LLC must be in the same proportion to the whole as the interest in the real property transferred. Thus after the transfer to the LLC the grantor corporation, partnership or LLC will have the same interest in the real property as before the transfer. Often when this transaction occurs the grantor corporation has not considered that its interest in the property is 100% and the interest it is transferring is something less. This will trigger the tax.

19. Change in identity or form of ownership. Any transfer of real property, whether accomplished by deed, conversion, merger, consolidation or otherwise, if it consists of a mere change in identity or form of ownership of an entity. This exemption is limited to those transfers where no change in beneficial ownership is made and may include transfers including corporations, partnerships, limited liability companies, trusts, estates, associations and other entities; and

This exemption, adopted in 2000, merely clarifies that transfers used to change the form of ownership without change in the ownership interests of the grantors are exempt. Note: When two or more corporations are owned by the same stockholders, they are nevertheless separate tax entities and a transfer between any two such corporations by deed is taxable. The same transfer may be deemed a taxable transaction under Exemption 20 below.

20. Controlling Interests. Transfers of controlling interests in an entity with a fee interest in real property if the transfer of the real property would qualify for exemption if accomplished by deed of the real property between the parties to the transfer of the controlling interest.

This exemption, adopted in 2002 requires a tax to be paid on transfers of real property accomplished by means other than deed, but exempts such transactions when they would otherwise be exempt from the tax. This includes the sale of corporate assets and other similar transactions.